

WORKERS' COMPENSATION INDUSTRIAL COUNCIL

APRIL 24, 2008

Minutes of the meeting of the Workers' Compensation Industrial Council held on Thursday, April 24, 2008, at 3:00 p.m., Offices of the West Virginia Insurance Commissioner, 1124 Smith Street, Room 400, Charleston, West Virginia.

Industrial Council Members Present:

Bill Dean, Chairman
Senator Don Caruth
Delegate Nancy Guthrie
Kent Hartsog
Dan Marshall (via telephone)
Senator Brooks McCabe
Walter Pellish
Delegate Carrie Webster (via telephone)

1. Call to Order

Chairman Bill Dean called the meeting to order at 3:00 p.m.

2. Approval of Minutes

Chairman Dean: The first item of business is the approval of the minutes of the last meeting. Has everybody had a chance to look at the minutes of the previous meeting?

Walter Pellish made the motion to approve the minutes from the March 20, 2008, meeting. The motion was seconded by Kent Hartsog and passed unanimously.

3. Office of Judges Report – Timothy G. Leach, Chief Administrative Law Judge

Judge Timothy Leach: I have submitted my summary of statistical analysis of the Office of Judges for year-to-date of 2008. I want to go over this as quickly as I can. I know Mary Jane and Ryan have a lot to talk about, so I don't want to take up the Council's time with my report.

Statistically we appear to be in good standing. First of all is the Office of Judges' Procedural Rule. We too have a proposed rule pending as well as the five that you are going to hear about from the Insurance Commissioner's staff today. I will touch at the very end of my report on four or five points that I think are important in that rule. I'll just skip ahead to the brief summary that I provided to you of other functions that the Office of Judges is performing, either required by the statute or requested by the Insurance Commissioner. There are six of those functions and I've kind of given you some numbers updating how many of those we're doing; how often the process is being utilized.

First is the expedited resolution of claim benefit denial. This is a process created by the statute to provide for an expedited resolution of three particular issues. For treatment our time standard was 120 days to begin with so we didn't have a lot of room to expedite that. But our expedited process gets all these three issues down to 100 days. It's an optional process that must be requested by the claimant. It is not being utilized. In 31 months we've had 159 requests, which is five a month. We set up the process for as many as one or two hundred a month, not knowing what to expect. So that's being underutilized in our opinion.

Senator Don Caruth: Can I stop you and ask. . .

Judge Leach: Yes, sir.

Senator Caruth: I'm kind of curious about your comments about it being underutilized. I mean if the expedited process was there for certain reasons, particularly extenuating circumstances in terms of treatment and things like that, it could also be looked upon as a strategy – litigation type of strategy. I guess I hadn't heard those numbers before, but I'm not so sure that I would necessarily agree that it's being underutilized in terms of what I believe it was originally intended for. Can you comment on that?

Judge Leach: We may be disagreeing over my use of the word "underutilized." It is utilized less than we anticipated that it might be. When the statute passed we sat down, looked at how many of these types of protests we had per month, which at that time were like 700 or 800 in those three issues alone, and thought we have to be scheduled in case everyone wants an expedited case in all of these. So we had to gear up in staff and provide a process that was prepared to handle 700 to 800 a month. We're getting five. So when I say "underutilized," I don't mean to be commenting on the reasoning of the people for not using the system, I just mean in terms of what we

anticipated we might have to be prepared for. So "underutilize" is probably a bad word. But it's not used to the extent that we were concerned that it might be.

Senator Caruth: Thank you.

Judge Leach: Thank you, Senator. Unreasonable denial of claims is another statute amended in 2005. This provides for an attorney fee award to the injured worker if the denial was unreasonably based at the time of the decision. We have only had 25 of those filed in the same period of 31 months. And of those, 11 were filed against the Insurance Commissioner's TPA's, and it doesn't apply to them so we had to dismiss those outright. So we've only had about 14 claims for attorney fees filed in 31 months. We had no indication of how many to expect in that category.

There is another process set up in the same legislation. These were all in 2005, I think. And this was a process by which the claimant could object if they couldn't get the carrier to rule on the case. We've had 67 of those filed since September 2005. Again – about half – 32 were filed against the Old Fund's administrator and the law doesn't apply to that. So we've had about 35 complaints that the claims administrator is sitting on paperwork and not ruling in two and a half years.

The fourth type of action we have been doing is "Petition by Employer/Administrator to Stay Payment of ALJ Award." When that law was first passed all of these came to the Office of Judges. Since October the party who is filing a petition has the option of filing with the Office of Judges or with the Board of Review. We had 70 from March until October. When the rule changed and an option was given to file with us or the Board of Review, the number has dropped to 20 since October which is about three and a third a month. We were averaging over ten a month when we were the exclusive remedy.

At the request of the Commissioner, we're serving as a Hearing Examiner in the Commissioner's default list notices. Since January 2006, when we started serving in that function, the Office of Judges has received 113 employer default appeals. I will comment that the vast majority of those get worked out informally and we've only sent over maybe a couple dozen decisions where we've actually had to resolve the appeal. And we also serve in the same capacity; that is, Hearing Examiner retained or employed by the Insurance Commissioner for "third-party bad faith complaints." I believe the 2005 legislation did away with third-party bad faith lawsuits in the previous administrative process. We've had 112 of those during the time when we served as a Hearing Examiner, and that's a two year total.

I want to discuss very briefly my Procedural Rule. The time schedule for the public comment period ends on May 9th. We are having a public hearing at the Office of Judges' conference room on that same day. This is for written comments and suggestions and also for testimony or statements at the public hearing. I provided you with a memo which I've sent to all the practitioners and TPA's who are on my mailing list. To highlight very briefly, most of the changes are technical clean up type of changes. There are five that I thought were important enough to bring to your attention in this report.

First we acknowledge the 2008 amendments indicate that the private carrier has sole authority to act on the employer's behalf in all aspects of litigation. The way we're interpreting that is the carrier can now withdraw an employer's protest if they don't want to pursue it. They also have the right to assign counsel to the employer as defense counsel.

The next major change was an acknowledgement of the 2008 legislation which limits the employer's right to protest to three specific issue types. So we have already started to refuse to accept some employer protests to other types of issues that are not covered by that Bill. That section of the Bill took effect upon passage so it is already the law. Our rule is just kind of catching up to the law.

We are increasing the time for expedited hearings which Senator Caruth and I just had a discussion about. Those hearings were limited to 30 minutes total, 15 minutes a side. We expect that we might have to do eight to ten hearings a day for a number of days a month so we were setting these up to go "bang, bang, bang." Senator Caruth has alluded that there might be a strategy to select that vehicle for appeal. We have suspected that some people are using it because it so restricts the other side's chance to respond that it is beneficial to them to do it that way. We are doubling the amount of time. We can probably even go longer than that. So we want to make those hearings last an hour which gives each side 30 minutes to either present new evidence or respond to the other side.

We have also recommended changing our mediation rule which previously had required that the mediator serve for free. We had major problems finding mediators that would serve for free. We are going to recommend that the claims administrator bear the cost. There were several options there. One; it could have been passed onto the Insurance Commissioner as an administrative expense shared by all carriers because it's part of the Office of Judges' budget to pay the mediator. So that's an alternative we could have taken. We also have the option of requiring the parties to share the expense. We were concerned about passing on judicial costs to injured workers, so we

chose perhaps a middle ground. We expect to receive some comments on that. If it's a self-insured employer, they're the administrator; they'll pay it. If it's Old Fund, the Old Fund's administrator will pay. If it's a private carrier, the private carrier will pay. That's our proposal. That is subject to change. We just had to throw out something to start the negotiations; I guess is how you look at that.

Finally I wanted to highlight that we have added a new section to our rule which also takes into account and regulates new changes in 2008. And that is a special process by which disputes between carriers about whether this is a new injury or this is a reopening of your old injury can be resolved before the Office of Judges, but the claimant [the injured worker] is paid during the process. So there is a whole regulation section covering that – a sentence or two in the amendments of 2008. And those are the highlights of our procedural rule. We'll have a final version filed hopefully by May 30 because it takes effect 30 days after filing with the Secretary of State and we want this in place by July 1.

Senator Caruth: The last discussion you had there about the controversy – what an insurance carrier should pay. I've had discussions with a number of people about occupational disease and the allocation of occupational disease. Is that going to be considered in the rule? I apologize. I haven't had a chance to go over this.

Judge Leach: No. The statute limits this provision to whether it's a new injury or reopening of an existing old injury. So it would not apply to the circumstances of allocating a claim between employers – you get 50% and you get 25% and you get 25%. It is not designed for that.

Senator Caruth: Would it apply to a situation where the allegation. . .there was no exposure with the new employer. In other words, could it apply in some respect to occupational disease?

Judge Leach: It could. It depends on kind of how they word the Order. The statute says that if the only issue is whether it's a new claim versus a reopening of an old claim and the carrier agrees that the claim is compensable, then this is the remedy. If they say there is no exposure for us and they reject the claim because there is no harmful exposure, then that's a different type of issue and that would not qualify for this. But if they said you had an old claim for the same occupational disease and it should be reopened but we agree that you are entitled to more benefits, it's just who is going to pay the bill; then that would come to us in this process. It is going to depend on how they word the denial. If they raise any reason at all other than it's not our case, then it doesn't go into the system.

Senator Caruth: Thank you very much.

Delegate Nancy Guthrie: Getting back to the mediators for just a second. When you were weighing your options, did you all take into account or put any kind of pen to paper on how much money it would cost if the Insurance Commissioner were to in fact bear the cost? How many cases you get per year that would fall under that category and how much it would cost per year?

Judge Leach: Well, again, it would depend on how many times we do the mediation. We are looking at between \$75.00 to \$100.00 per case. When we started a trial run at this back in 2004, we tried to mediate 40 to 50 cases a month. So if you do the math that way you're talking \$100.00 times 40 – \$4,000.00 a month; total \$48,000.00. But we couldn't get the Workers' Compensation Commission at that time, who had our budget, to pay anything. So that hurt. Also we had serious problems with doing 40 a month because the attorneys representing the Commission were too overtaxed to cover that many additional hearings a month. So the thing just fell apart for a couple of different reasons. We were trying to arrange a schedule for three parties – the Workers' Compensation Commission, the employer and the claimant, and each of the three parties' lawyers. So you were talking about six different people, trying to get them all in one room at one time. It was a nightmare. Now we have more of a two-party system. So we think we might have some success, and the statute gives us authority to do this at our discretion or that the parties can request it. It has been in our regulations since 2004, I think, and no one is requesting it. So I think what will happen is that we'll have to kind of push to see if we can get it anywhere. I don't think it's going to be a major expense. Although if you ask me to pay \$48,000.00 I would say that is a major expense. I just don't know what it is going to cost because I can't really estimate how often it will be used.

Delegate Guthrie: Not to belabor the point, but if I'm correct about this, don't all of the self-insureds pay into. . . isn't that what funds the Insurance Commissioner by and large?

Judge Leach: There is an administrative expense paid by self-insureds and by private carriers which include, among other things, my office budget and the Board of Review's office budget and other administrative functions of the Insurance Commissioner. I think it becomes an issue of whether your cost. . . saying everybody is going to pay this, or are you going to charge it case specific to the carrier that the mediation is going against?

Delegate Guthrie: You could always make a point though that they've already paid once, so why would they have to pay again? That is sort of a double administrative cost.

Judge Leach: I think your point can have merit and I expect to hear similar types of arguments made during our comment period, so we'll have to weigh that. Now we're trying to work with the Insurance Commissioner's folks and seeking some guidance from them rather than force something at them.

Delegate Guthrie: I understand. Thank you.

Chairman Dean: Does anybody have questions for Judge Leach? Are you going to stick around for public comments?

Judge Leach: Sure.

Chairman Dean: Thank you.

4. Initial Draft of Amendments to Rules 1, 2, 6, 8 and 18 – Ryan Sims

Ryan Sims (Associate Counsel, Offices of the Insurance Commissioner): Chairman Dean and members of the Industrial Council, good afternoon. We are bringing before you today five rules – Title 85, Series 1; Title 85, Series 2; Title 85, Series 6; Title 85, Series 8; and Title 85, Series 18 – for permission to initially file with the Secretary of State. Many of these changes are from legislation primarily in House Bill 4636. But we're also trying to make these rules most appropriate by July 1st when the market opens to all the carriers and obviously make that compliant with the law; provide clarification. I am going to go through them in order and just touch on what I think are the most significant changes in each one. I did send the Industrial Council members a bullet summary of what the substantive changes are in each rule.

I am going to touch on each one beginning with Title 85, Series 1, "Claims Management and Administration." This is probably the most significant change we added – self-insured employers to the purview of this rule. Essentially our goal has been, I think, a well taken point for years. Ever since self-insured employers have been self-administering there has been sort of a separate set of claims handling standards applicable to them, than what's applicable to private carriers. Under the law, and also just from a policy perspective, I don't think there is any reason why private carriers versus TPA's for self-insured employers should be subject to any different claims

handling standards. They are administering workers' comp claims and they should do so consistent with Chapter 23, and the rules under the workers' comp Code. Again, we included them in there and we struck the provisions regarding claims handling in Rule 18.

Secondly, we provided some clarification in subsection 3.1. There is a provision that an injured employee should report an injury within two working days of it occurring. It seems in the past there was some confusion, probably just isolated circumstances. But there was some confusion where a claims adjustor would think that they could deny a claim simply because it wasn't reported in two days. When actually what the rule says is that it can be one factor weighing against compensability. So we provided some clarification to avoid any confusion like that in the future. And, again, to be clear that two days is one factor that can weigh against compensability. But we wanted to make sure that claims adjustors weren't denying claims inappropriately just for the one fact that it wasn't reported within two working days.

In Section 7 we placed some language in there to reflect some of the significant changes in House Bill 4636. Judge Leach touched upon them to some degree, but we also felt it was appropriate to put it in a substantive rule – clarifying the two-party system; the new 60-day timeframe instead of 30 days to protest claims; two-party system where an employer [working with their carrier] can protest an order.

Section 13 – We struck that section, which was Section 13 in the former rule which provided that carriers, now self-insured employers, would have to provide notice to a claimant after six months of no activity [on the claim] of closure of the claim. After reviewing this issue and really talking with all the stakeholders it was our belief that it was kind of a meaningless section because this notice regarding closure really had no effect on the substantive rights of the claimant and was rather confusing. They would protest it just because that's a normal reaction sometimes to protest any Order which could be seen as adverse. At least in a private market setting it is certainly within the right of the carrier or the TPA to "deactivate a claim" or put it on a modem in their system. It has zero effect on the claimant and their substantive rights. They can get back in touch with the carrier or the TPA if they believe there is some activity in the claim, such as they need additional medical benefits or something like that. And those statutes for that are set forth very clearly in the Code. We did not see any purpose for this administrative closure and we felt that in some instances it would just encourage litigation. We chose to strike that in the draft.

Title 85, Series 2, "Workers' Compensation Claims Index" Rule – The primary substantive change is in 4.2. We added (g.). That's basically an additional field to the

claims information that's available when somebody requests a claims index report on a claimant, which is a percentage of PPD awards or percentages of PPD awards which were awarded in the past. At the last Industrial Council meeting there was actually a motion by you in which you agreed [with Mary Jane Pickens] that that should be an additional field in the claims index. So this is just implementing what you already did.

Title 85, Series 6, "Workers' Compensation Debt Reduction Fund Assessments and Regulatory Surcharges – Series 6 is the rule pertaining to the debt reduction fund assessments and regulatory surcharges. In Section 3.10 we slowly changed the term a little bit. Basically what the definition is, it's a definition to describe what could constitute the worker's compensation premium which is subject to surcharges. We changed it to the term "assessable workers' compensation premium due" just for clarification purposes. And we provided more detailed guidance as to what is workers' compensation premium subject to – the worker's compensation surcharges versus general insurance premium that's subject to surcharges under Chapter 33.

Additionally in subsection 4.1 we added language to reflect a couple of changes in House Bill 4636, which essentially fixed the percentages for both the debt reduction surcharge and the regulatory surcharge at a fixed rate. I believe it's 5.5% for the regulatory surcharge and 9% for the debt reduction surcharge, and that's fixed from 2008 to 2013 so we reflected that in the rule. We figured since it's fixed like that for five years it would be good to put that in there. The way the statute reads, on 2013 the Insurance Commissioner can consider changing those percentage amounts if necessary.

Rule 8, "Workers' Compensation Policies, Coverage Issues and Related Topics" – Rule 8, as you probably recall, is a very extensive rule covering various issues. To be very clear, we very much intend to make this a limited change to Rule 8. All we want to do is jump into Section 9 to reflect the new time frames for carriers for reporting to our group coverage system and for reporting renewals, cancellations and those types of notices to insureds. There were some changes in House Bill 4636 in that regard. And, again, we're just jumping in that section to make those changes. We spent extensive time on that last time and we think it is a pretty good product right now. It is really not our intention to jump in and do any wholesale changes to that rule at this time.

Title 85, Series 18, "Self Insurance, Self Administration and Third Party Administrators" – Rule 18 pertains to self-insurance and the self-insureds. Again, as with Rule 1, I discussed how we want to create Rule 1 to be the primary rule for claims handling issues. Like I said in Rule 1, we did add self-insureds to the purview of that rule. Likewise we removed the claims handling standards that were previously in

Section 7 of Rule 18. Essentially what we did is we compared Rule 1 and Rule 18, and we did transplant a few from Rule 18 to Rule 1, if we thought it was appropriate. But we carefully went through the standards in Rule 18 to make sure that whatever was in 18 that would be good to transplant to Rule 1 we did. Otherwise we're going to Rule 1, for the most part, to be the primary rule for claims handling standards.

Subsection 8.3 – Right now self-insured employers have to post a \$1 million dollar minimum amount of security regardless of what their liabilities are. We felt that it would be appropriate to provide them the ability to make a request to the Insurance Commissioner after they have been active for five years to reduce that \$1 million dollar minimum amount.

Kent Hartsog: Mr. Sims. . .

Mr. Sims: Yes.

Mr. Hartsog: On that one in particular, why a million dollars? How was that amount determined?

Mr. Sims: Well, it's been in the rule for a number of years well before we transitioned over. I think the belief is it's just to provide some minimum amount of security. I mean these self-insured employers are normally a fairly significant size. The belief was just a minimum amount of security. . .I wasn't there when that amount was decided upon. It was decided that it was appropriate to provide some minimum security. Ms. Kiss. . .

Melinda Kiss: It was basically calculated to the estimated cost of permanent total disability awards, plus related expenses. . .

Mr. Sims: Section 11 in Rule 18. It pertains to the self administration of claims. Again, I touched on this at the beginning. We struck most of those claims handling standards in deference to Rule 1 which now will apply to self-insured employers and insurance carriers. In Section 17, there were some detailed provisions regarding qualifications for third party administrators.

In House Bill 4636 the Legislature actually created some language requiring third party administrators for self-insured employers to meet the same standards that third party administrators for other insurance carriers [in Chapter 33] have to meet. They actually have to become licensed just as other TPA's under Chapter 33 have to now. What it says under the amendment is just that they have to meet the requirements of

third party administrators under Chapter 33. Again, that was another amendment. I think it is contemplated under the Legislation that there will be a separate rule promulgated. Mary Jane, is that going to be under Title. . .?

Mary Jane Pickens (General Counsel, Offices of the Insurance Commissioner): I believe it's Title 85? On TPA's?

Mr. Sims: Right. It is anticipated that we're going to do a separate rule on TPA's. Not just for self-insured employers but any TPA doing work for a workers' compensation carrier. That will go into a little more detail about what needs to be met and what their requirements are for those TPA's. Again, on the lines of keeping the standards consistent for self-insured employers and insurance carriers, our intention is to do a single rule addressing TPA's.

Those are the points I wanted to touch on in Rule 18. With that I will present these draft rules to the Industrial Council for permission to initially file. I will emphasize this is just the beginning and there will be a 30-day comment period commencing with the Public Hearing which will be at the next [Industrial Council] meeting on May 29 on these five rules. Of course we'll receive written comments during that period as well. With that I will turn these initial drafts over to the Industrial Council.

Chairman Dean: We have a few questions. Delegate Guthrie, do you have a question?

Delegate Guthrie: Yes. Ryan, when we were talking before about the rule that had mileage and there were some discussions about reducing the mileage, then it was determined that that really was never the Legislature's intent. Given the cost of gasoline and given the fact that a lot of folks that have to go through this process are living on fixed incomes, is there any way to revisit that mileage issue in these rules and increase it substantially? People are running around all over the state trying to get the treatments that they need and the question is then they can't really afford the gas to do it. So, is there any way within the context of this rules "bundle" to revisit that mileage issue?

Mr. Sims: Given some degree of ambiguity in that Code section, I think that is really a policy matter and I will defer to Mary Jane on answering that.

Ms. Pickens: We haven't proposed any amendments to those provisions of the rule. But the rule is out there for public comment and I suppose if people would like to comment on that issue they certainly can and come back before the Industrial Council

for consideration. We're not proposing any amendments to that provision in the rule presented today.

Delegate Guthrie: It could be heard during the public comment portion?

Ms. Pickens: Sure. I expect that people who want to comment on that issue they will.

Mr. Hartsog: Which rule is that in, Mary Jane?

Ms. Pickens: Rule 1.

Delegate Webster: I have a question.

Chairman Dean: Delegate Webster, go ahead.

Delegate Webster: Thank you, sir. Ryan, I'll start with you. Can you hear me?

Mr. Sims: Yes ma'am.

Delegate Webster: Okay. I want to make sure because I was taking notes. You just reviewed in summary one, two, three, four. . .five rules?

Mr. Sims: Correct.

Delegate Webster: My first question – because I didn't hear any mention of it – is in 85CSR1, Section 5. In the material we were provided, and what some of our legislative staff is going through, has references to the termination of expenses under certain circumstances that does not seem to be consistent with statute. Is that being proposed? I didn't hear anybody address that.

Mr. Sims: Are you talking about Section 5 of the current draft that we sent out on Rule 1?

Delegate Webster: I think so. In Section 9. . .I think the statute imposes a mandatory duty to pay benefits prior to consideration of weighing the evidence. And then in the proposed rule, if I'm looking at it right, has some provisions that would allow for the termination of benefits. I do not see that being provided in any statute, according to the analysis that we received in an e-mail from legislative staff.

Mr. Sims: If you give me a specific reference in the rule I'd be glad to look at it.

Delegate Webster: Well, I'm working off an abstract, although I have the rules in front of me or in another part of the computer. In CSR1, Section 5, what are the changes that you all are proposing?

Mr. Sims: It looks like. . .I guess you are referencing the situations where individuals are retired in 5.2. . .maybe? Does that sound familiar?

Delegate Webster: I know that you talked about how we are applying this to the self-insureds now.

Mr. Sims: Correct.

Delegate Webster: You know, in terms of the claims management process. Correct?

Mr. Sims: Correct.

Delegate Webster: Okay. Are there any other changes that are done that would affect the termination of benefits? And maybe it is the "retirement one" because you know we have the widow benefit provision that is in statute that this may be similar to.

Mr. Sims: Well, in Section 5. . .

Delegate Webster: The retiree. . .

Mr. Sims: In Section 5.2 on the current draft contemplates not paying temporary totals to an individual if they were retired prior to filing the claim; I believe is what that does. That section was already in there. The only change we made to that was we changed some language in there. We added a phrase actually for clarification purposes – "as long as the individual remains retired. . .," because we didn't want somebody to begin working again and then be barred from receiving TTD benefits. Other than that, as to the statutory authority behind that, I mean obviously this provision was promulgated well before we undertook this rule which has been around for a long time. I really don't know much about the history. The only thing I can do is maybe. . .Becky Roush is here and she deals with more. . .

Delegate Webster: I don't need the history. If you all are saying there is no changes then it could be that the provisions. . .the abstract I've gotten. . .I know Senator

Caruth is there. I don't know if he has looked at it or not; what we were provided. Maybe it is inaccurate what we were given. The three or four of us were e-mailed an abstract of some of these rules. I didn't hear you mention anything about the mileage reimbursement issue, but I know Delegate Guthrie raised it. Is there not a rule pending now for public comment that addresses mileage reimbursement?

Mr. Sims: Well, Rule 1 is the rule that we are presenting right now for filing and public comment and it does include a provision pertaining to mileage reimbursement.

Delegate Webster: We're talking about substantive changes to the rule and the abstract I have says that it would be proposed at 15 cents per mile. So if the person moves, and you're not doing it for financial hardship. . .then there would not be any and then it would be at the state's reimbursement rate if its employer ordered. Now I've seen that in the proposed rule myself. I did read that last night. But I didn't hear any mention of that in your summary.

Ms. Pickens: Delegate Webster, this is Mary Jane. I just want to jump in. The reason why Ryan didn't mention it is because we're not proposing any change to that. I think his intent in running through the proposals today was just to notify everybody of just what we're proposing as amendments or changes.

Delegate Webster: So you're saying whatever I'm talking about isn't. . .because what I'm looking at – and I'm wondering if I got the wrong information, I mean wrong copies – I don't know what I would be looking at though. You're saying there is no proposal to change the standard, or do anything with respect to mileage at all?

Ms. Pickens: Correct.

Delegate Webster: Including terminating mileage reimbursement if a person moved except for two or three reasons?

Ms. Pickens: No. Whatever is in the rule that's before everybody today is the way the rule has been for quite some time.

Delegate Webster: Well, I do not know what I'm looking at. Well let me mention this other thing because, again, maybe I have the wrong thing. I don't know how that would be possible though unless they pulled it out like from last year, you know, the rules that you are looking at. What about the. . .and I didn't see any reference to it; that's why I'm wondering. . .is where you could "stay" the order? In Senate Bill 595 we went in and we made very clear that if you're appealing a decision that is not going to

stay the underlying award – I thought I even got an e-mail from somebody today beyond staff – that does allow that to occur. Am I right or wrong on that?

Ms. Pickens: I think what happened with Senate Bill 595 is the Legislature specifically authorized in certain circumstances a stay of an OOJ decision pending review at the Board of Review and that you could either take that petition for a stay to the ALJ that issued the decision or you could take it to the Board of Review. And earlier when Judge Leach was given his presentation he was talking about some statistics related to that and talking about the fact that now it's dropped down at his shop because some of those are going to the Board of Review.

Delegate Webster: Do we have any proposed language in this rule that would affect that?

Ms. Pickens: No. Well there is language in there right now but its language that was amended into it several months ago.

Delegate Webster: Okay. It's not anything that's up for public comment? Correct?

Ms. Pickens: Correct. We did that right after 595 to implement 595 basically. But there are no proposals to change any of that language in this version.

Delegate Webster: Okay. I guess my final clarification then is with respect. . .the way our current rule works with mileage reimbursement. . .is it 15 cents? Is that right?

Ms. Pickens: For treatment related. If a claimant is going to his/her own treating physician and it's the higher rate – the state reimbursement rate – if it is being ordered by the employer or the carrier.

Delegate Webster: Okay. Did we do that several months ago at one of those meetings?

Ms. Pickens: Before we inherited the rule that was the provision. At one point several months ago we did reopen that section and there was a whole lot of debate surrounding that issue and the Industrial Council ended up just leaving it alone basically.

Delegate Webster: Right. Okay. I have in front of me draft language that specifically is underlined. . .I have no idea. . .

Ms. Pickens: I'll go back after this meeting and make sure we e-mail you everything that is to date. We'll make sure you've got the right stuff.

Delegate Webster: Okay. If the other members in the room, particularly the legislative members, are not experiencing what I'm experiencing, or haven't looked at it, then it is obviously. . .I'll meet with you then if I find that it was sent to me as part of this packet. Thank you.

Ms. Pickens: Okay.

Chairman Dean: Mr. Pellish, you had a question.

Walter Pellish: Ryan, I have a question based on these documents that we're working off of. You didn't touch on it – the added new provision in subdivision 13.9 which permits the OIC to establish a corrective action plan. Could you expound on that a little bit?

Mr. Sims: For self-insured employers in Rule 18?

Mr. Pellish: Yes.

Mr. Sims: Sure. Rule 18 has been the primary rule for self-insured employers for a while. In the rule itself, there has been really just two remedies for taking any kind of regulatory action against the self-insured employer for failure to do something properly that they are supposed to do under the law, be it administering claims or reporting payroll or the various duties that self-insured employers have. The two options have been a fine or termination. We have done I think at least one corrective action plan and I would have to ask Angie [Shepherd]. Maybe I am misspeaking. Is that correct Angie?

Angela Shepherd: Yes.

Mr. Sims: Just one so far. It's our belief that there would be another remedy in it. There should be another remedy other than fine or revocation of self-insured status, and that would be working with the self-insured employer in drafting a corrective action plan. For example, if we find they are having trouble with a certain type of claim – ruling on it; they're not ruling on it correctly. We would say, "This is the way you are suppose to do this and in a year or so we'll come back and see if you are appropriately ruling on these claims whereas you were not before." It's really another alternative in addition or that could be combined with a fine; just another alternative for our Self-Insured Unit when we

notice a particular problem with a self-insured employer short of revoking their status permanently.

Ms. Pickens: And that's also consistent with how we regulate the insured community, insured carriers.

Mr. Pellish: So it's bringing a balance.

Ms. Pickens: Yes.

Mr. Pellish: Okay.

Chairman Dean: Any other questions from the Industrial Council.

Chairman Dean: Is there is a motion to file Title 85, Series 1, 2, 6, 8 and 18 for public comment?

Mr. Pellish made the motion to file the rules with the Secretary of State's Office for the 30-day public comment period. The motion was seconded by Mr. Hartsog.

Chairman Dean: A motion has been made and seconded to file these rules for public comment. Any questions on the motion? All those in favor signify by saying "aye." All opposed. The aye's have it. Motion passes.

Motion passes to initially file the following rules with the Secretary of State:

Title 85, Series 1 – Claims Management and Administration

Title 85, Series 2 – Workers' Compensation Claims Index

Title 85, Series 6 – Workers' Compensation Debt Reduction Fund Assessments
and Regulatory Surcharges

Title 85, Series 8 – Workers' Compensation Policies, Coverage Issues
and Related Topics;

Title 85, Series 18 – Self Insurance, Self Administration and Third
Party Administrators

5. General Public Comments

Chairman Dean: Does the general public have any comments today?

6. New Business

Chairman Dean: We'll move onto new business. Does anybody have anything under new business today?

7. Next Meeting

Chairman Dean: The next meeting is Thursday, May 29, 2008, at 3:00 p.m.

Delegate Webster: My agenda says May 22nd.

Chairman Dean: It says the 29th on my paper.

Ms. Pickens: I apologize. It actually had been scheduled for May 22nd and maybe the first version that everybody received said the 22nd. We e-mailed since then and told everybody that it's the 29th. When we counted our days we didn't have 30 days [for public comment], and it would have been an inadequate notice for the public comment period and the Public Hearing. It will be May 29th.

Delegate Webster: Okay.

8. Adjourn

Mr. Hartsog made the motion to adjourn. The motion was seconded by Mr. Marshall and passed unanimously.

There being no further business the meeting adjourned at 3:52 p.m.